

WEBINAR WEDNESDAYS



Wednesday, February 10, 2021

Addressing Sexual & Domestic Violence: Disarming BATTERERS

Presented by:

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Independent Consultant and Trainer
HR Tanner Consulting, LLC

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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Webinar Wednesday


Disarming the Batterer

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HR Tanner Consulting, LLC

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Everywhere I go, I hear the same thing....



"You don't understand,
in (insert state here)
everyone has a gun!"

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Why be Concerned about Availability of Guns in This Context?

Unique Danger to Domestic Violence Victims We Serve

Nationwide, firearms are used in 60% of intimate partner homicides of women. Guns and domestic violence are a lethal combination, injuring and killing women every day in the United States. A gun is the weapon most commonly used in domestic homicides.

Futures Without Violence, www.futureswithoutviolence.org

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Why be Concerned about Availability of Guns in This Context?

Unique Danger to Those with Whom We Serve

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2 police officers shot and killed in McAllen, Texas

The suspect shot and killed himself, police said.

By Mark O'Connell and Michael Ramirez
APR 10, 2020, 12:12 PM PT | 11 min read

The suspect, identified as Aldon Caramillo, 23, had a history of arrests. His previous charges included driving under the influence, fleeing from officers, assault and marijuana possession, Rodriguez said.

Police: Gunman shoots 2 Texas officers, hits 3rd in holster

Authorities say two law enforcement officers were shot when a suspect in his class's death fired on them in North Texas
By The Associated Press
APR 10, 2020, 7:17 PM PT | 10 min read

Police Officer Ismael Chavez
Police Officer Edelmiro Garza, Jr.
McAllen (TX)
Police Department

End of Watch:
July 11, 2020

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Ten Years of Mass Shootings in the United States

AN EVERYTOWN FOR GUN SAFETY SUPPORT FUND ANALYSIS

In at least **54%** of mass shootings, the perpetrator shot an intimate partner or family member.

1 in 3 mass shooters were legally prohibited from possessing firearms at the time of the shooting.

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Why be Concerned about Availability of Guns in This Context?

Unique Danger to The Community We Serve

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Gunman kills 26 at school

Conn. rampage is 2nd deadliest in US

By JOHN CHRISTOFFERSEN
Associated Press

NEWTOWN, Conn. — A man killed his mother at home and then opened fire Friday inside the elementary school where he taught, massacring 26 people, including 20 children, as youngsters cowered in fear to the sound of gunfire reverberating through the building and screams echoing over the intercom.

The 20-year-old killer, carrying two handguns, committed suicide at the school, bringing the death toll to 28, authorities said.

The rampage, coming less than two weeks before Christmas, was the nation's second-deadliest.

SHANNON WOOD/NEWTOWN Bee

Connecticut State Police lead children from the Sandy Hook Elementary School in Newtown, Conn., following a shooting at the school that left 27 dead, including the gunman, Friday.

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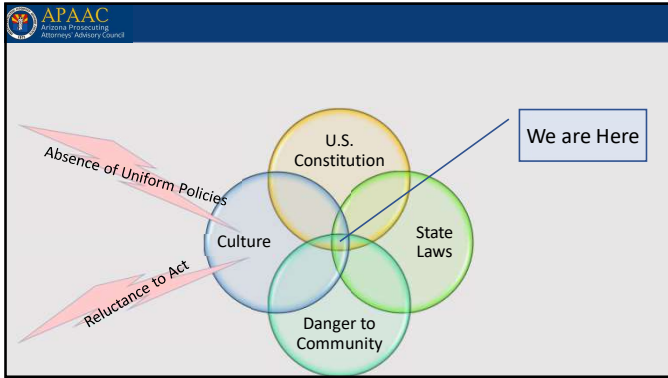
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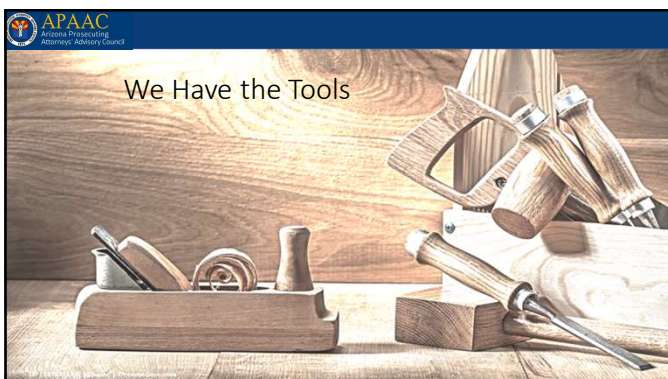
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State Laws

- Seizure at Arrest
- Bond
- "Misuse of Firearms", unlawful possession
- Orders of Protection

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Policy versus Culture

- "Culture will eat policy for breakfast."
- Policy is still important – and it is necessary step to culture change
- Policy of seizure in every appropriate case



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You know this, right? A.R.S. § 13-3601


- Officer "may" ask "persons who are present" if a firearm is present
- Upon "learning" or "observing" that a firearm is present
- Officer "may" temporarily seize firearm(s) "in plain view", or found in consensual search, if reasonable belief it exposes victim or another person in the house to risk of serious bodily injury or death
- Query: Given what we just went through, what circumstances would justify a finding that possession doesn't pose such a risk?

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What If?

Suspect admits to possessing lots of guns on the premises, but they aren't in plain view and suspect declines to consent to a search?



- Ask someone else present for consent, if that person has the apparent authority to grant it?
- Get a search warrant before the suspect bonds out?

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Prosecutor's Duties


- File notice of intent to keep firearm if there is "reasonable cause cause to believe" that returning it "may" endanger the victim
- Appear at the hearing where "owner or possessor" may dispute the grounds for seizure – does the defendant testify at this?

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Firearm can be retained for "not more than six months" following seizure

- Why six months?
- What if the case is still pending?
- What if the possessor is otherwise prohibited?



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Pretrial Conditions – Rule 7.3 (c)

- Broad grant of authority to impose protective conditions if “reasonably necessary” to protect another person or the community
- Reinforced at 13-3601(I)
- Lethality assessment must be considered, if provided (so why not provide it in every case)
- Prohibit the defendant from possessing a dangerous weapon

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- If the firearm is not seized per 13-3601, does the bond require the defendant to turn it over before release?

- How do we get it?

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

- [X] 1. Appear at _____ court on _____ at _____ a.m. / p.m., Courtroom: _____
for _____ and attend all future court hearings.
- [X] 2. Violate no federal, state or local criminal laws.
- [X] 3. Not leave the state of Arizona without written permission from the court.
- [] 4. Defendant may leave the state of Arizona provided defendant returns for court dates.
- [X] 5. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- [] 6. Maintain contact with your attorney.
- [] 7. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
- [] 8. Not threaten or initiate any type of contact with the alleged victim(s).
- [] 9. Not drive a motor vehicle without a valid driver's license in your possession.
- [] 10. Not threaten or initiate any type of contact with any person as specified here: _____
- [] 11. Not possess weapons as specified here: _____
- [] 12. Not consume any alcoholic beverages.
- [] 13. Not go to scene of the alleged crime.
- [] 14. Not go to locations as specified here: _____
- [] 15. Comply with 3rd party custody release conditions as specified here: _____ (See 3rd party obligations in this document.)
- [] 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 15 of Title 13).
- [] 17. Other: *When over all firearms must be presented to police on bench warrant before release*

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

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Orders of Protection

- Murder Prevention – recent research shows any firearms prohibition in a DV protection order results in a reduction in firearm IPH and overall IPH – Zeoli, A. *et al*
- Biggest reduction was found in states that required relinquishment of firearms
- A lot depends upon law enforcement implementation

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Orders of Protection

- Firearms restrictions does not follow every order
- Court must ask about the defendant's use of or access to weapons or firearms" in order to "determine if the defendant poses a credible threat to the physical safety of the plaintiff."
Rule 6(C)(5)(d)(1)

THE COURT FURTHER ORDERS:

☐ **RESIDENCE.** Plaintiff is granted exclusive use and possession of the residence currently shared with Defendant.

☐ **LAW ENFORCEMENT STANDBY.** Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor the protective order can resolve conflicts over property, life, furniture, finances, real estate, or other ownership issues.

PROTECTED LOCATIONS. Defendant shall not go to or near Plaintiff's or Protected Person's:

☐ Residence (confidential): _____

☐ Workplace (leave blank if confidential): _____

☐ School/other: _____

ARIZONA FIREARMS LAW. Under A.R.S. § 13-3602(C)(4), the court finds that Defendant poses a credible threat to the physical safety of Plaintiff or Protected Person. Therefore, Defendant shall not possess, receive, or purchase firearms and shall surrender same within 24 hours of notice to:

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Orders of Protection

And if they don't do this?

THE COURT FURTHER ORDERS:

☐ **RESIDENCE.** Plaintiff is granted exclusive use and possession of the residence currently shared with Defendant.

☐ **LAW ENFORCEMENT STANDBY.** Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, life, furniture, finances, real estate, or other ownership issues.

PROTECTED LOCATIONS. Defendant shall not go to or near Plaintiff's or Protected Person's:

☐ Residence (confidential): _____

☐ Workplace (leave blank if confidential): _____

☐ School/other: _____

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The Gun's Going to Go Somewhere

- Unless it is going to be forfeited, government holds the firearm as a bailee, and has no right to sell, damage, or destroy it
- Always verify that owner/possessor is not a prohibited person
 - State law
 - Federal law (more on that in a sec)
- If prohibited after seizure, owner/possessor can designate a person to keep the guns, but...

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... You Got Some Explaining to do

- State and federal disqualifications
- The concept of constructive possession
- Does transfer of handguns require a license to purchase?

Pima County Sheriff's Office
Albuquerque, New Mexico

NOTICE TO THIRD PARTY RECEIVING FIREARMS SEIZED PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER

I hereby acknowledge that I have been informed that the firearm(s) I am receiving were seized in a domestic violence case. I understand that the defendant or respondent, _____, in this matter is no longer allowed to own, possess or have access to any firearm or ammunition.

I hereby certify that I understand the provisions of the federal law referenced in 18 U.S.C. 922(j) and that it has been explained to me. I understand that I can be held criminally liable if I violate this notice. I understand that I can be imprisoned for up to ten years and fined up to \$102,000 (1) dollars if I allow the defendant to have access to or possess the firearm(s) I am receiving.

I understand that I must comply with all state and federal requirements regarding the use, transfer and possession of firearms.

I understand that I must furnish a **Permit to Purchase or Acquire a Weapon** from the sheriff of my county of residence for each handgun that I receive.

Name: _____

Signature: _____

Date: _____

Witnessed by: _____


Title: _____

Date: _____

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We'll Enforce Federal Law When Pigs Fly



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Need to Know Basis

Possession of a firearm while subject to a Protection Order - 18 U.S.C. § 922(g)(8)

It is illegal for a person to possess a firearm **while subject to a court order** restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The protection order must have been issued following a hearing as to which the defendant had actual notice and an opportunity to participate. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury.

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Need to Know Basis

Transfer of Firearm to Person Subject to Order of Protection - 18 U.S.C. §922(d)(8)

It is illegal to transfer a firearm to a person knowing *or having reasonable cause to believe* that such person is subject to a court order that restrains him/her from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish unless the purchaser acknowledges in the firearm application that he/she is a prohibited person.

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Really Need to Know Basis

Possession of Firearm/Ammunition by Person Convicted of a Misdemeanor Crime of Domestic Violence - 18 U.S.C. §922(g)(9)

- It is a federal crime to possess a firearm and/or ammunition after conviction of a qualifying state misdemeanor crime of domestic violence
- Must be a "qualifying" misdemeanor

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Qualifying Misdemeanor

- Misdemeanor has as an element the use or attempted use of physical force or threatened use of a deadly weapon.
- Misdemeanor committed by current or former spouse, parent or guardian, by current or former cohabitant as a spouse, parent or guardian, or by parent with the victim of a child in common.
- Date of conviction must precede firearm possession.

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Qualifying Misdemeanor

- Represented by counsel or waived right to counsel
- If entitled to jury, had a jury trial or waived right to jury trial
- If conviction expunged, set aside or civil rights have been restored (if the offense provides for loss of civil rights)

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Putting the Puzzle Together

© Vincent Giordano | Dreamstime.com

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DV Firearms Investigation

- Make it a policy to thoroughly check criminal history for any prohibition on ownership or possession of a firearm or ammunition
- If a prohibited possessor under state, law request a warrant, or make arrest as appropriate
 - Probationer for DV offense or felony 13-3101(7)(d); Misconduct Involving Weapons 13-3102(A)(4)
 - Bond Violation
 - Protection Order Violation
- If prohibited by federal law refer case to BATFE – “Not your circus. Not your Monkeys.”

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Let's Make a Federal Case of it

- Every US Attorney's Office should have a designated VAWA attorney, get to know them
- Opportunity for multi-jurisdictional task forces
- Special Assistant United States Attorney Appointment
 - A State Prosecutor is appointed a AUSA for a specific purpose
 - The State Prosecutor is paid by the State
 - State Prosecutor represents United States and prosecutes federal crimes (with cooperation and assistance of an AUSA)

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Think Creatively

- Most cases of unlawful possession will arise from a direct report by a citizen/victim
- Or as a result of investigation of a different case, even a traffic stop
- But consider other investigative avenues
 - Lawful searches by probation officers
 - Firearms Hunting Licenses – why would a prohibited possessor need one of these?
 - Public facing social media

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